

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

LINDA L. HOPFER and KEVIN HOPFER	:	
Plaintiffs,	:	
v.	:	No. 05-CV-1409
	:	
HONEY BROOK TOWNSHIP, et al.,	:	
Defendants	:	

MEMORANDUM

GREEN, S.J

June 8, 2005

Presently pending is Defendants Honey Brook Township, Gossert, and Sasso's Motion to Dismiss Portions of Plaintiffs' Complaint and Plaintiff's Response in Opposition thereto. Defendants move to dismiss Count V (false imprisonment), Count VI (conspiracy pursuant to 42 U.S.C. § 1985(3)), and Counts VIII, IX, and X (for violations of Article I, § 8 of the Pennsylvania Constitution for false imprisonment, malicious prosecution, and excessive force, respectively) of Plaintiffs' Complaint. For the reasons set forth below, Defendants' motion will be granted in part, and denied, in part.

BACKGROUND

In their Complaint, Plaintiffs allege that Kevin Hopfer was riding his dirt bike in Honeybrook Township. Defendants Sasso and Baxter, police officers for the Township, arrived at Plaintiffs' home to investigate a person riding a dirt bike in the fields near Plaintiffs' home. Plaintiffs assert that the officers blocked the exit to their garage, thereby disallowing Kevin Hopfer to leave the garage. Linda Hopfer, Kevin Hopfer's mother, exited her home, informed the officers that they did not have permission to enter onto her property and asked them to leave. The Complaint alleges that the officers ignored her requests, continued to detain Kevin Hopfer, and interrogated him. The officers also allegedly confiscated the dirt bike and helmet. Linda Hopfer attempted to take the helmet from one of the officers. The Complaint alleges that the officers used substantial and unreasonable force in throwing her against her home, and

subsequently handcuffing and placing her in a patrol vehicle. Linda Hopfer was arrested and charged with felony assault against Defendant Baxter. Kevin Hopfer was issued a citation for riding his dirt bike in a field without the owner's permission.

The Complaint further alleges that in July 2003, Kevin Hopfer had a summary trial in which he plead not guilty. Defendant Sasso acted as the prosecuting officer and Defendant Baxter allegedly testified that he saw Kevin Hoper riding the bike. Plaintiffs complain that the officers failed to provide their counsel with any police reports prepared in the case. Kevin Hopfer was convicted and fined \$500.00. He subsequently filed a *de novo* appeal to the Court of Common Pleas of Chester County. At this trial, Plaintiffs had the police report, prepared by Defendant Baxter, which stated that he had *not* seen Kevin Hopfer riding the bike. After the hearing, Defendant Baxter allegedly admitted to a Chester County Assistant District Attorney that he committed perjury when he testified that he saw Kevin Hopfer riding his dirt bike. Plaintiffs aver that as a result of an investigation launched pursuant to this admission, Defendant Baxter was suspended and eventually terminated from the Honeybrook Police Department. Plaintiffs also maintain that both Defendants Baxter and Sasso had prior complaints of excessive force made against them.

Plaintiffs filed a fourteen count Complaint against Defendants. The counts include allegations of violations of 42 U.S.C. § 1983 for excessive force, failure to supervise, malicious prosecution, false arrest/imprisonment, and a *Monell* claim that the Township's policy, custom, or practice led to the violation of their rights. The Complaint also includes a count pursuant to 42 U.S.C. § 1985(3) for conspiracy. Counts VIII, IX, and X are brought pursuant to Article I, § 8 of the Pennsylvania Constitution and - as stated above - are for false imprisonment, malicious prosecution, and excessive force, respectively. Counts XI through XIV are state claims for false imprisonment, malicious prosecution, assault and battery, and intentional infliction of emotional distress.

DISCUSSION

In considering a Rule 12(b)(6) motion to dismiss for failure to state a claim, all allegations in the complaint and all reasonable inferences that can be drawn from them must be accepted as true and viewed in the light most favorable to the non-moving party. Jordan v. Fox, Rothschild, O'Brien & Frankel, 20 F.3d 1250, 1261 (3d Cir. 1994). A complaint will "be deemed to have alleged sufficient facts if it adequately put the defendant on notice of the essential elements of the plaintiff's cause of action." Id. at 65. A court must construe the complaint in the light most favorable to the plaintiff. Conley v. Gibson, 355 U.S. 41 (1957). Claims should be dismissed under 12(b)(6) only if "it appears beyond doubt that the plaintiff can prove no set of facts in support of [its] claim which would entitle [it] to relief." Nami v. Fauver, 82 F.3d 63, 65 (3d Cir. 1996).

I. Section 1983 Claim for False Arrest/Imprisonment

Defendants assert that Kevin Hopfer's Count V claim for false arrest/imprisonment should be dismissed because the Complaint does not contain any allegation that the Defendant police officers placed Kevin Hopfer under arrest and charged him with a crime. Relying on Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868 (1968), Defendants argue that an investigatory stop is not an arrest unless and until the duration and amount of the force used in the situation is "unreasonable." See Def. Mem. at 5. Defendants argue that it is clear from the face of the Complaint that the officers were investigating suspected criminal activity. Defendants also argue that "...it can be inferred from the face of the complaint that the police officers had probable cause to investigate suspected criminal activity." Id. However, viewing the allegations in the Complaint in the light most favorable to Plaintiffs, the court cannot conclude as a matter of law that Plaintiffs are not entitled to any relief on this theory of liability, nor can the court determine - at the stage of this proceeding without the benefit of a fully

developed record - that the investigation and its duration was reasonable. Therefore, Defendants' motion to dismiss Kevin Hopfer's claim brought pursuant to 42 U.S.C. § 1983 for false arrest/imprisonment will be denied.

II. Conspiracy

Defendants also argue that Count VI of the Complaint must be dismissed because it is brought pursuant to 42 U.S.C. § 1985(3). Plaintiffs concede that this case does not involve issues of racial discrimination. Plaintiffs also argue, however, that they are alleging that the defendant officers conspired to commit the acts as set forth in the Complaint and seek leave to amend the Complaint to correctly plead their claim for conspiracy. Consequently, Defendants' motion to dismiss Count VI of the Complaint will be granted and Plaintiffs will be granted leave of court to amend the Complaint and re-plead their conspiracy claim.

III. Violations of the Pennsylvania Constitution

Defendants finally argue that Counts VIII, IX, and X of the Complaint should be dismissed because they allege violations of the Pennsylvania Constitution for which Defendants assert there is private no cause of action for damages. The Supreme Court of Pennsylvania has not decided whether a private cause of action for damages under the Pennsylvania Constitution exists. " See, Douris v. Schweiker, 229 F.Supp.2d 391, 405 (E.D.Pa.2002) (citing to various federal cases in which courts have observed lack of state law with respect to this issue). "Federal courts within the Third Circuit confronting the issue have consistently noted that Pennsylvania does not have a statute 'akin to 42 U.S.C. § 1983'. Dooley v. City of Philadelphia, 153 F.Supp.2d 628, 663 (E.D.Pa.2001). " Tillman v. Alonso 2005 WL 1311588 E.D.Pa., Plaintiffs argue that in Jones v. City of Philadelphia, October Term 2001, No. 3641 (July 30, 2004), the Court of Common Pleas, Philadelphia County - noting that it was addressing a constitutional issue of first impression - concluded that a municipality was not

immune from suit for alleged violations of this provision (Article I, §8) of the Pennsylvania Constitution. Plaintiff has filed similar state law claims for the actions also listed as violations of the Pennsylvania Constitution. Pennsylvania common law provides a remedy for damages on such claims upon a sufficient showing of proof. Because Pennsylvania state law already provides plaintiffs with the availability of pursuing claims for false imprisonment, malicious prosecution, and excessive force, I predict that the Supreme Court of Pennsylvania would hold that there is no private cause of action available for Plaintiffs claims arising pursuant to Article I, § 8 of the Pennsylvania Constitution. Plaintiffs' claims arising thereunder will be dismissed without prejudice, thereby permitting Plaintiff's to re-institute these claims should the Supreme Court of Pennsylvania decide this issue during the pendency of this action. Defendants' motion to dismiss Plaintiffs' Pennsylvania constitutional claims will be granted.

An appropriate order follows.

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HONEY BROOK TOWNSHIP, et al.,	:	
Defendants	:	

ORDER

AND NOW, this 8th day of June 2005, **IT IS HEREBY ORDERED** that Defendants' Motion to Dismiss portions of Plaintiffs' Complaint is **GRANTED**, in part, and **DENIED**, in part. **IT IS FURTHER ORDERED** that:

1. Defendants' Motion to Dismiss Count V of Plaintiffs' Complaint is **DENIED**.
2. Defendants' Motion to Dismiss Count VII of Plaintiffs' Complaint is **GRANTED**.
3. Plaintiffs are granted leave of court to file an Amended Complaint repleading their conspiracy claim. An Amended Complaint may be filed within 15 days of the date of this Order.
4. Defendants' Motion to Dismiss Counts VIII, IX, and X of the Plaintiffs' Complaint is **GRANTED**, without prejudice.
5. Defendants' shall file an Answer to the Complaint or Amended Complaint within thirty-five (35) days of the date of this Order.

BY THE COURT:

s/_____

Clifford Scott Green, S.J.